



CERTIFICATION OF MAILING BY "EXPRESS MAIL"

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Date of Deposit: **29 September 2004**

Virginia Griffith
Virginia Griffith

I hereby certify that this paper or fee and accompanying documents referred to below are being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 C.F.R. 1.10 on the date indicated above and is addressed to the Assistant Commissioner of Patents, Washington, D.C. 20231.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor(s): Kao et al

Serial No: 09/660,992

Filed: 13 September 2000

For: SIDE LIGHT ACTIVATED
MICROFLUIDIC CHANNELS

Examiner: L.G. Lauchman

Art Unit: 2877

Confirmation No: 7948

Declaration by Hung Pin Kao
Under 37 C.F.R. 1.132

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

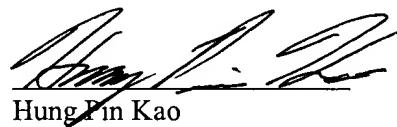
I, Hung Pin Kao, declare as follows:

1. I was employed continuously as an engineer at Soane BioSciences, Inc. and ACLARA Biosciences, Inc. from December 2, 1997 to March 1, 2001, and as a condition of my employment agreed to assign all right, title and interest in and to any invention made by me in the course of my employment to Soane Biosciences, or its successor ACLARA Biosciences.

2. I am the sole inventor of the claimed subject matter in U.S. patent 6,558,945. I am also the joint inventor of the subject matter disclosed but not claimed in that patent, such subject matter being shown in Figs. 1, 2A, and 2B, and further described in the specification in col. 7, line 61, to col. 8, line 46.

3. I further declare that all statements made herein of my own knowledge are true and all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Respectfully submitted,



A handwritten signature in black ink, appearing to read "Hung Pin Kao".

Hung Pin Kao

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor(s): **Kao et al**

Serial No: **09/660,992**

Filed: **13 September 2000**

For: **SIDE LIGHT ACTIVATED
MICROFLUIDIC CHANNELS**

Examiner: **L.G. Lauchman**

Art Unit: **2877**

Confirmation No: **7948**

Declaration by Stephen C. Macevicz
Under 37 C.F.R. 1.132

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

I, Stephen C. Macevicz, declare as follows:

1. I am the Vice President of Intellectual Property and patent counsel for ACLARA Biosciences, Inc., a Delaware corporation, and assignee of the above-identified patent application and U.S. patent 6,558,945, cited by the Examiner in the Office Action dated 17 August 2004 in connection with rejections under 35 U.S.C. 102(e) and 103(a). I represent ACLARA Biosciences in all matters before the United States Patent and Trademark Office. Below, I describe the documents attached as Exhibits A through C that show that Hung Pin Kao and Xing Yang were under an obligation to assign the inventions of the above-identified application and U.S. patent 6,558,945 to a common owner, namely, ACLARA Biosciences, Inc., or its predecessor corporation, Soane Biosciences, Inc.

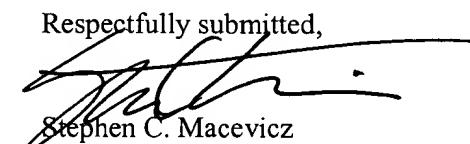
2. Hung Pin Kao is the sole inventor named on U.S. patent 6,558,945 filed March 8, 2000, and Hung Pin Kao and Xing Yang are the joint inventors on the above-identified application having a filing date of September 13, 2000. The U.S. patent and the above-identified application claim priority from provisional patent applications 60/123,349 filed March 8, 1999, and 60/153,644 filed September 13, 1999, respectively.

3. Attached hereto as Exhibit A is a true copy of the Proprietary Information Agreement signed and dated December 2, 1997, by Hung Pin Kao, under which pursuant to section II.B. of the Agreement Hung Pin Kao agrees to assign to Soane BioSciences, Inc., the corporate predecessor of ACLARA Biosciences, Inc., all right, title and interest in and to any inventions made as an employee of Soane BioSciences.

4. Attached hereto as Exhibit B are true copies of (i) a Certification of Amendment of the Certificate of Incorporation of Soane Biosciences, Inc., in which Joseph M. Limber, then President of Soane Biosciences, certifies that the corporate name of Soane Biosciences, Inc. had been changed to ACLARA Biosciences, Inc. and (ii) a Certification from the Secretary of the State of Delaware that the corporate name of Soane Bioscience, Inc. had been changed to ACLARA Biosciences, Inc.

5. Attached hereto as Exhibit C is a true copy of the Proprietary Information Agreement signed and dated August 4, 1998 by Xing Yang, under which pursuant to section II.B. of the Agreement Xing Yang agrees to assign to ACLARA BioSciences, Inc., the corporate successor of Soane Biosciences, Inc., all right, title and interest in and to any inventions made as an employee of ACLARA BioSciences, Inc.

6. I further declare that all statements made herein of my own knowledge are true and all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Respectfully submitted,

Stephen C. Macevicz
Reg. No. 30,285
Attorney for Applicants

Attachments: Exhibits A-C

SOANE BIOSCIENCES, INC.

PROPRIETARY INFORMATION AGREEMENT

As a Senior Research Engineer to/for Soane BioSciences, Inc., its subsidiary or its affiliate (together, the "Company"), and in consideration of the compensation now and hereafter paid to me, I agree to the following:

I. Maintain Confidential Information

A. Company Information. I agree at all times during the term of my employment as Engineer (my "employment") and thereafter to hold in strictest confidence, and not to use, except for the benefit of the Company, or to disclose to any person, firm or corporation without written authorization of the Board of Directors of the Company, any trade secrets, confidential knowledge, data or other proprietary information relating to products, processes, know-how, designs, formulas, developmental or experimental work, computer programs, business plans, financial information or other subject matter pertaining to any business of the Company or any of its clients, consultants or licensees.

B. Former Employer Information. I agree that I will not, during my employment with the Company, improperly use or disclose any proprietary information or trade secrets of my former or concurrent employers or companies, if any, and that I will not bring onto the premises of the Company any unpublished document or any property belonging to my former or concurrent employers or companies, if any, unless consented to in writing by said employers or companies.

C. Third Party Information. I recognize that the Company has received and in the future will receive from third parties their confidential or proprietary information subject to a duty on the Company's part to maintain the confidentiality of such information and to use it only for certain limited purposes. I agree that I owe the Company and such third parties, during the term of my employment and thereafter, a duty to hold all such confidential or proprietary information in the strictest confidence and not to disclose it to any person, firm or corporation (except as necessary in carrying out my work for the Company consistent with the Company's agreement with such third party) or to use it for the benefit of anyone other than for the Company or such third party (consistent with the Company's agreement with such third party) without the express written authorization of the Board of Directors of the Company.

EXHIBIT "A"

II. Retaining and Assigning Inventions and Original Works

A. Inventions and Original Works Retained by Me. I have attached hereto, as Exhibit A, a list describing all inventions, original works of authorship, developments, improvements, and trade secrets which were made by me prior to my employment with the Company, which belong to me, which relate to the Company's proposed business and products, and which are not assigned to the Company, or, if no such list is attached, I represent that there are no such inventions.

B. Inventions and Original Works Assigned to the Company. I agree that I will promptly make full written disclosure to the Company, will hold in trust for the sole right and benefit of the Company, and will assign to the Company all my right, title, and interest in and to any and all inventions, original works of authorship, developments, improvements or trade secrets which I may solely or jointly conceive or develop or reduce to practice, or cause to be conceived or developed or reduced to practice, during the period of time I am in the employ of the Company. I recognize, however, that Section 2870 of the California Labor Code (as set forth in Exhibit B attached hereto) exempts from this provision any invention as to which I can prove the following:

1. It was developed entirely on my own time; and
2. No equipment, supplies, facilities or trade secrets of the Company were used in its development; and
3. It either
 - (a) does not relate, at the time the invention was conceived or reduced to practice, to the Company's or to the Company's actual or demonstrably anticipated research and development; or
 - (b) does not result from any work performed by me for the Company.

I acknowledge that all original works of authorship which are made by me (solely or jointly with others) within the scope of my employment and which are protectable by copyright are "works made for hire," as that term is defined in the United States Copyright Act (17 USCA, Section 101).

C. Maintenance of Records. I agree to keep and maintain adequate and current written records of all inventions and original works of authorship made by me (solely or jointly with others) during the term of my employment the Company. The records

will be in the form of notes, sketches, drawings, and any other format that may be specified by the Company. The records will be available to and remain the sole property of the Company at all times.

D. Inventions Assigned to the United States. I agree to assign to the United States government all my right, title, and interest in and to any and all inventions, original works of authorship, developments, improvements or trade secrets whenever such full title is required to be in the United States by a contract between the Company and the United States or any of its agencies.

E. Obtaining Letters Patent and Copyright Registrations. I agree that my obligation to assist the Company to obtain United States or foreign letters patent and copyright registrations covering inventions and original works of authorship assigned hereunder to the Company shall continue beyond the termination of my employment, but the Company shall compensate me at a reasonable rate for time actually spent by me at the Company's request on such assistance. If the Company is unable because of my mental or physical incapacity or for any other reason to secure my signature to apply for or to pursue any application for any United States or foreign letters patent or copyright registrations covering inventions or original works of authorship assigned to the Company as above, then I hereby irrevocably designate and appoint the Company and its duly authorized officers and agents as my agent and attorney-in-fact, to act for and in my behalf and stead to execute and file any such applications and to do all other lawfully permitted acts to further the prosecution and issuance of letters patent or copyright registrations thereon with the same legal force and effect as if executed by me. I hereby waive and quitclaim to the Company any and all claims, of any nature whatsoever, which I now or may hereafter have for infringement of any patents or copyrights, resulting from any such application for letters patent or copyright registration assigned hereunder to the Company.

F. Exception to Assignments. I understand that the provisions of this Agreement requiring assignment to the Company do not apply to any invention which qualifies fully under the provisions of Section 2870 of the California Labor Code, a copy of which is attached hereto as Exhibit B. I will advise the Company promptly in writing of any inventions, original works of authorship, developments, improvements or trade secrets that I believe meet the criteria in Subparagraphs 2b(i), (ii), and (iii) above; and I will at that time provide to the Company in writing all evidence necessary to substantiate that belief. I understand that the Company will keep in confidence and will not disclose to third parties without my consent any confidential information disclosed in writing to the Company relating to inventions that qualify fully under the provisions of Section 2870 of the California Labor Code.

III. Returning Company Documents. I agree that, at the time of leaving the employ of the Company, I will deliver to the Company (and will not keep in my possession or deliver to anyone else) any and all devices, records, data, notes, reports, proposals, lists, correspondence, specifications, drawings, blueprints, sketches, materials, equipment, other documents or property, or reproductions of any aforementioned items belonging to the Company, its successors or assigns. In the event of the termination of my employment, I agree to sign and deliver the "Termination Certification" attached hereto as Exhibit C.

IV. Representations. I agree to execute any proper oath or verify any proper document required to carry out the terms of this Agreement. I represent that my performance of all the terms of this Agreement will not breach any agreement to keep in confidence proprietary information acquired by me in confidence or in trust prior to my employment by the Company. I have not entered into, and I agree I will not enter into, any oral or written agreement in conflict herewith.

V. General Provisions

A. Governing Law. This Agreement will be governed by the laws of the State of California.

B. Entire Agreement. This Agreement sets forth the entire agreement and understanding between the Company and me relating to the subject matter herein and merges all prior discussions between us. No modification of or amendment to this Agreement, nor any waiver of any rights under this Agreement, will be effective unless in writing signed by the party to be charged. Any subsequent change or changes in my duties, salary or compensation will not affect the validity or scope of this Agreement.

C. Severability. If one or more of the provisions in this Agreement are deemed void by law, then the remaining provisions will continue in full force and effect.

D. Successors and Assigns. This Agreement will be binding upon my heirs, executors, administrators and other legal representatives and will be for the benefit of the Company, its successors, and its assigns.

Dated as of XX/XX- December 2, 1997

By: Huang Pin KAO
(sign name)

Huang Pin KAO
(print name)

Jerry L. Lai
Witness

EXHIBIT B

CALIFORNIA LABOR CODE SECTION 2870

EMPLOYMENT AGREEMENTS; ASSIGNMENT OF RIGHTS

"(a) Any provision in an employment agreement which provides that an employee shall assign, or offer to assign, any of his or her rights in an invention to his or her employer shall not apply to an invention that the employee developed entirely on his or her own time without using the employer's equipment, supplies, facilities, or trade secret information except for those inventions that either:

- (1) Relate at the time of conception or reduction to practice of the invention to the employer's business, or actual or demonstrably anticipated research or development of the employer.
- (2) Result from any work performed by the employee for the employer.

(b) To the extent a provision in an employment agreement purports to require an employee to assign an invention otherwise excluded from being required to be assigned under subdivision (a), the provision is against the public policy of this state and is unenforceable."

EXHIBIT A

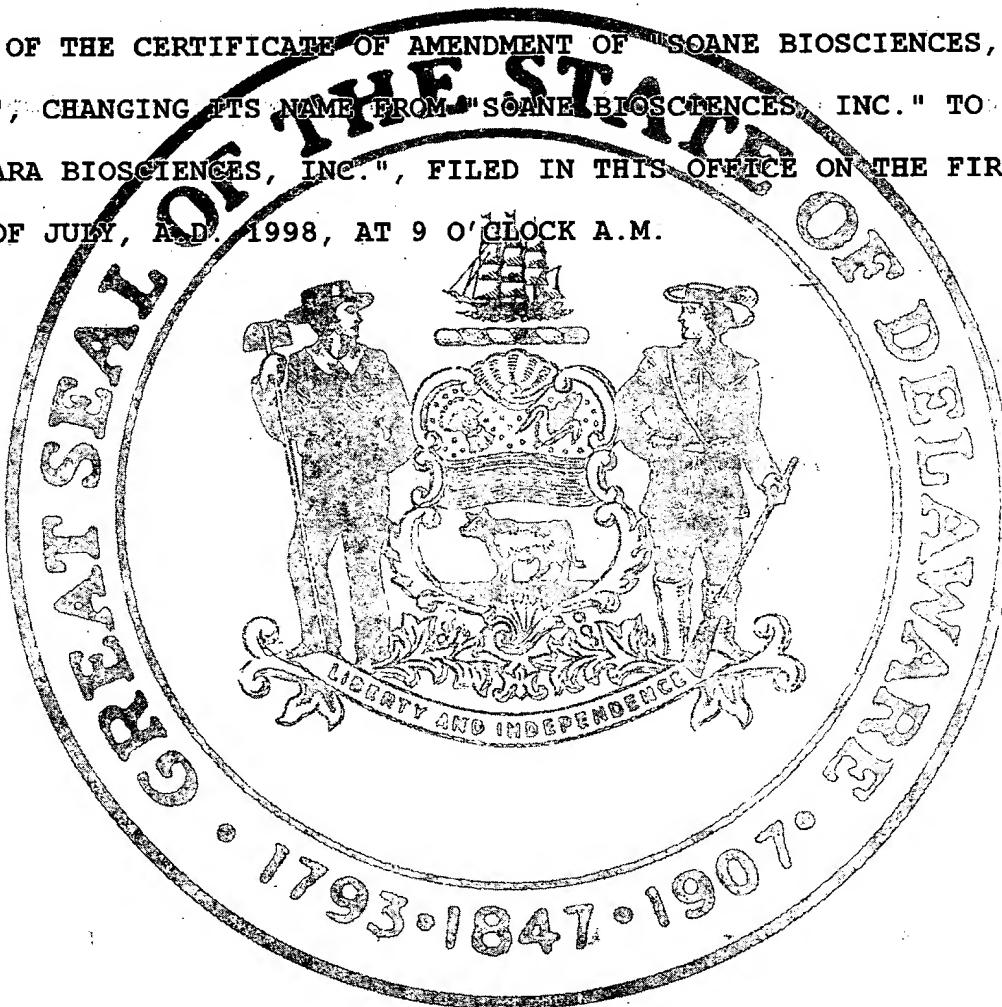
LIST OF PRIOR INVENTIONS
AND ORIGINAL WORKS OF AUTHORSHIP

<u>Title</u>	<u>Date</u>	<u>Identifying Number or Brief Description</u>
Elliptical Trough Reflector for Efficient Collection of Light from Linear Sources	Sept. 8, 1997	Sandia Disclosure (Technical Advance) from Sandia National Labs
Technique for Enhancement of Evanescent Fluorescence and Color Filtering Using High Refractive Index, Thin Fibers	Sept. 8, 1997	"
Use of J Aggregating Dyes for Enhancement of Energy Transfer Fluorescence in Chemical Sensors (tentative title)	Dec. 1, 1997	"

Name of Employee: H. Pin KAO

State of Delaware
Office of the Secretary of State PAGE 1

I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF AMENDMENT OF "SOANE BIOSCIENCES, INC.", CHANGING ITS NAME FROM "SOANE BIOSCIENCES, INC." TO "ACLARA BIOSCIENCES, INC.", FILED IN THIS OFFICE ON THE FIRST DAY OF JULY, A.D. 1998, AT 9 O'CLOCK A.M.



Edward J. Freel
Edward J. Freel, Secretary of State

2498400 8100

AUTHENTICATION: 9298580

981354811

DATE: 09-11-98

EXHIBIT "B"

**CERTIFICATE OF AMENDMENT OF
THE AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION OF
SOANE BIOSCIENCES, INC.**

The undersigned, Joseph M. Limber, hereby certifies that:

1. He is the duly elected and acting President and Secretary, respectively, of Soane BioSciences, Inc., a Delaware corporation.

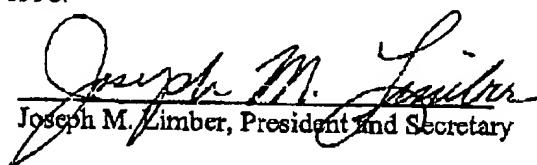
2. The Certificate of Incorporation of this corporation was originally filed with the Secretary of State of Delaware on April 12, 1995 and was amended on May 4, 1995, on November 30, 1995, on October 30, 1996, on April 15, 1997, on December 15, 1997 and on March 24, 1998.

3. Pursuant to Section 242 of the General Corporation Law of the State of Delaware, this Certificate of Amendment of the Amended and Restated Certificate of Incorporation amends Article I of this corporation's Amended and Restated Certificate of Incorporation to read in its entirety as follows:

"The name of this corporation is ACLARA BioSciences, Inc."

4. The foregoing Certificate of Amendment has been duly adopted by this corporation's Board of Directors and stockholders in accordance with the applicable provisions of Sections 228 and 242 of the General Corporation Law of the State of Delaware.

Executed at Hayward, California, on June 30, 1998.


Joseph M. Limber, President and Secretary

ACLARA BIOSCIENCES, INC.
PROPRIETARY INFORMATION AGREEMENT

As a Engineer to/for ACLARA BioSciences, Inc., its subsidiary or its affiliate (together, the "Company"), and in consideration of the compensation now and hereafter paid to me, I agree to the following:

I. Maintain Confidential Information

A. Company Information. I agree at all times during the term of my employment as engineer (my "employment") and thereafter to hold in strictest confidence, and not to use, except for the benefit of the Company, or to disclose to any person, firm or corporation without written authorization of the Board of Directors of the Company, any trade secrets, confidential knowledge, data or other proprietary information relating to products, processes, know-how, designs, formulas, developmental or experimental work, computer programs, business plans, financial information or other subject matter pertaining to any business of the Company or any of its clients, consultants or licensees.

B. Former Employer Information. I agree that I will not, during my employment with the Company, improperly use or disclose any proprietary information or trade secrets of my former or concurrent employers or companies, if any, and that I will not bring onto the premises of the Company any unpublished document or any property belonging to my former or concurrent employers or companies, if any, unless consented to in writing by said employers or companies.

C. Third Party Information. I recognize that the Company has received and in the future will receive from third parties their confidential or proprietary information subject to a duty on the Company's part to maintain the confidentiality of such information and to use it only for certain limited purposes. I agree that I owe the Company and such third parties, during the term of my employment and thereafter, term, a duty to hold all such confidential or proprietary information in the strictest confidence and not to disclose it to any person, firm or corporation (except as necessary in carrying out my work for the Company consistent with the Company's agreement with such third party) or to use it for the benefit of anyone other than for the Company or such third party (consistent with the Company's agreement with such third party) without the express written authorization of the Board of Directors of the Company.

II. Retaining and Assigning Inventions and Original Works

A. Inventions and Original Works Retained by Me. I have attached hereto, as Exhibit A, a list describing all inventions, original works of authorship, developments, improvements, and trade secrets which were made by me prior to my employment with the Company, which belong to me, which relate to the Company's proposed business and products, and which are not assigned to the Company, or, if no such list is attached, I represent that there are no such inventions.

B. Inventions and Original Works Assigned to the Company. I agree that I will promptly make full written disclosure to the Company, will hold in trust for the sole right and benefit of the Company, and will assign to the Company all my right, title, and interest in and to any and all inventions, original works of authorship, developments, improvements or trade secrets which I may solely or jointly conceive or develop or reduce to practice, or cause to be conceived or developed or reduced to practice, during the period of time I am in the employ of the Company. I recognize, however that Section 2870 of the California Labor Code (as set forth in Exhibit B attached hereto) exempts from this provision any invention as to which I can prove the following:

1. It was developed entirely on my own time; and
2. No equipment, supplies, facilities or trade secrets of the Company were used in its development; and
3. It either
 - (a) does not relate, at the time the invention was conceived or reduced to practice, to the Company's or to the Company's actual or demonstrably anticipated research and development; or
 - (b) does not result from any work performed by me for the Company.

I acknowledge all original works of authorship which are made by me (solely or jointly with others) within the scope of my employment which are protectable by copyright are "works made for hire," as that term is defined in the United States Copyright Act (17 USCA, Section 101).

C. Maintenance of Records. I agree to keep and maintain adequate and current written records of all inventions and original works of authorship made by me (solely or jointly with others) during the term of my employment the Company. The records will be in the form of notes, sketches, drawings, and any other format that may be specified by the Company. The records will be available to and remain the sole property of the Company at all times.

D. Inventions Assigned to the United States. I agree to assign to the United States government all my right, title, and interest in and to any and all inventions, original works of authorship, developments, improvements or trade secrets whenever such full title is required to be in the United States by a contract between the Company and the United States or any of its agencies.

E. Obtaining Letters Patent and Copyright Registrations. I agree that my obligation to assist the Company to obtain United States or foreign letters patent and copyright registrations covering inventions and original works of authorship assigned covering inventions and original works of authorship assigned hereunder to the Company shall continue beyond the termination of my employment, but the Company shall compensate me at a reasonable rate for time actually spent by me at the Company's request on such assistance. If the Company is unable because of my mental or physical incapacity or for any other reason to secure my signature to apply for or to pursue any application for any United States or foreign letters patent or copyright registrations covering inventions or original works of authorship assigned to the Company as above, then I hereby irrevocably designate and appoint the Company and its duly authorized officers and agents as my agent and attorney-in-fact, to act for and in my behalf and stead to execute and file any such applications and to do all other lawfully permitted acts to further the prosecution and issuance of letters patent or copyright registrations thereon with the same legal force and effect as if executed by me. I hereby waive and quitclaim to the Company any and all claims, of any nature whatsoever, which I now or may hereafter have for infringement of any patents or copyrights, resulting from any such application for letters patent or copyright registration assigned hereunder to the Company.

F. Exception to Assignments. I understand that the provisions of this Agreement requiring assignment to the Company do not apply to any invention which qualifies fully under the provisions of Section 2870 of the California Labor Code, a copy of which is attached hereto as Exhibit B. I will advise the Company promptly in writing of any inventions, original works of authorship, developments, improvements or trade secrets that I believe meet the criteria in Subparagraphs 2b (i), (ii), and (iii) above; and I will at that time provide to the Company in writing all evidence necessary to substantiate that belief. I understand that the Company will keep in confidence and will not disclose to third parties without my consent any confidential information disclosed in writing to the Company relating to inventions that qualify fully under the provisions of Section 2870 of the California Labor Code.

III. Returning company Documents. I agree that, at the time of Leaving the employ of the Company, I will deliver to the Company (and will not keep in my possession or deliver to anyone else) any and all devices, records, data, notes, reports, proposals, lists, correspondence, specifications, drawings, blueprints, sketches, materials, equipment, other documents or property, or reproductions of any aforementioned items belonging to the Company, its successors or assigns. In the event of the termination of my employment, I agree to sign and deliver the "Termination Certification" attached hereto as Exhibit C.

IV. Representations. I agree to execute any proper oath or verify any proper document required to carry out the terms of this Agreement. I represent that my performance of all the terms of this Agreement will not breach any agreement to keep in confidence proprietary information acquired by me in confidence or in trust prior to my employment by the Company. I have not entered into, and I agree I will not enter into, any oral or written agreement in conflict herewith.

V. General Provisions

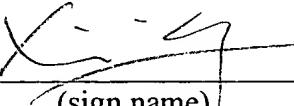
A. Governing Law. This Agreement will be governed by the laws of the State of California.

B. Entire Agreement. This Agreement sets forth the entire agreement and understanding between the Company and me relating to the subject matter herein and merges all prior discussions between us. No modification of or amendment to this Agreement, nor any waiver of any rights under this Agreement, will be effective unless in writing signed by the party to be charged. Any subsequent change or changes in my duties, salary or compensation will not affect the validity or scope of this Agreement.

C. Severability. If one or more of the provisions in this Agreement are deemed void by law, then the remaining provisions will continue in full force and effect.

D. Successors and Assigns. This Agreement will be binding upon my heirs, executors, administrators and other legal representatives and will be for the benefit of the Company, its successors, and its assigns.

Dated as of 8/4, 1978

By: 
(sign name)
XING YANG
(print name)

Witness

EXHIBIT A

LIST OF PRIOR INVENTIONS AND ORIGINAL WORKS OF AUTHORSHIP

<u>Title</u>	<u>Date</u>	<u>Identifying Number or Brief Description</u>
1. Thermo-pneumatic Silicone Rubber Membrane Valve (Yu-Chong Tai, Xing Yang, Charles Grosjean)		Patent Pending
2. Micro Bellows Actuator (Yu-Chong Tai, Xing Yang)		Patent Pending
3. Microfluidic Sub-Millisecond Mixers		Patent Pending
4. Micromachined Stepjet Silicone/Parylene Composite Membrane Valve (Yu-Chong Tai, Xing Yang .) Charles Grosjean	2/23/1998	
5. Micromachined Membrane Particle Filter (Yu-Chong Tai, Xing Yang)	10/10/1997	Provisional Patent Application has been filed .
6. Micromachined Parylene Membrane Valve and Pump (Yu-Chong Tai, Xing Yang) Charles Grosjean, Xuan-Qi Wang	10/10/1997	

Name of Employee: _____

EXHIBIT B

CALIFORNIA LABOR CODE SECTION 2870

EMPLOYMENT AGREEMENTS; ASSIGNMENT OF RIGHTS

“(a) Any provision in an employment agreement which provides that an employee shall assign, or offer to assign, , any of his or her rights in an invention to his or her employer shall not apply to an invention that the employee developed entirely on his or her own time without using the employer’s equipment, supplies, facilities, or trade secret information except for those inventions that either:

(1) Relate at the time of conception or reduction to practice of the invention to the employer’s business, or actual or demonstrably anticipated research or development of the employer.

(2) Result from any work performed by the employee for the employer.

(b) To the extent a provision in an employment agreement purports to require an employee to assign an invention otherwise excluded from being required to be assigned under subdivision (a), the provision is against the public policy of this state and is unenforceable.”